

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 08-322(2) (DSD/SRN)
Civil No. 10-1947(DSD)

United States of America,

Plaintiff,

v.

ORDER

Arthur Jamar Griffin,

Defendant.

This matter is before the court upon the pro se petition of defendant Arthur Jamar Griffin (Griffin) to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255.

On January 13, 2009, a jury convicted Griffin of conspiracy to possess with intent to distribute cocaine. ECF No. 117. Griffin did not appeal. On May 3, 2010, Griffin filed the instant § 2255 petition. Griffin argues that he received ineffective assistance of counsel from his attorney at trial, Kassius O. Benson (defense counsel), on the bases that defense counsel failed to call a witness, improperly advised Griffin not to appeal his sentence, and did not follow Griffin's instruction to file an appeal. See ECF No. 148. On July 30, 2010, the court denied Griffin's petition as to the failure to call a witness and the advice rendered by defense counsel. See ECF No. 155. The court ordered an evidentiary hearing on the sole issue of whether Griffin asked defense counsel to file a notice of appeal. See id.

Griffin appeared at the October 12, 2010, evidentiary hearing, along with new, retained counsel. At the hearing, Griffin withdrew his claim that defense counsel failed to appeal his sentence after Griffin asked him to do so. Therefore, this basis for § 2255 relief is moot and Griffin is not entitled to relief. Accordingly, consistent with the July 30, 2010, order of the court, **IT IS HEREBY ORDERED** that Griffin's motion to vacate, set aside or correct his sentence is denied.

Dated: October 14, 2010

s/David S. Doty
David S. Doty, Judge
United States District Court